IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.170 OF 2005
IN
SUMMONS FOR JUDGMENT NO.229 OF 2003
IN
SUMMARY SUIT NO.114 OF 2003

M/s.Archna Inds. Transformers Pvt.Ltd. ....Appellants
Ori.Defts

V/s.

M/s.Alfa Lamination ....Respondents
Ori.Plffs

WITH

APPEAL NO.171 OF 2005
IN
SUMMONS FOR JUDGMENT NO.230 OF 2003
IN
SUMMARY SUIT NO.113 OF 2003

M/s.Archna Inds. Transformers Pvt.Ltd. ....Appellants
Ori.Defts

V/s.

M/s.Alfa Transcore Industries ....Respondents
Ori.Plffs

Mr.R.V. Govilkar for the Appellants.
Mr.Rajeshwar for the Respondents.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 22ND MARCH, 2005.

P.C. :

1. By consent the Appeals are admitted and heard

finally. As the learned Judge has passed a common order in both the Summons for Judgment, it would be convenient to dispose of both the Appeals by this common order.

2. The Respondents are sister concerns and have filed the above Summary Suits against the Appellants. The Respondents' case is that they had supplied certain goods to the Appellants and in respect whereof they had raised the necessary bills and maintained a ledger account in their books of account. In respect of the goods sold and delivered in the year 1998-99, the Defendants issued various post dated cheques and agreed to keep them revalidated if not honoured on the due dates. In respect the transactions in Appeal No.170 of 2005, six cheques were issued for an aggregate sum of Rs.29,94,486/-. Two of the cheques were revalidated once and the remaining cheques were revalidated twice. The Appellants had counter signed the amended date on the cheques. Similarly in respect of the transactions in Appeal No.171 of 2005, the Appellant had issued three cheques each of which were revalidated twice. The amended date was counter signed by the Appellant.

3. There is hardly any defence on merits.

Mr.Govilkar, the learned counsel appearing on behalf of the Appellants submitted that the suit was barred by limitation. There is no substance in this defence as the cheques have been revalidated. Mr.Govilkar disputed the Respondents' case that the cheques had been counter signed in respect of the change in the date thereof. However, after seeing the cheques which were produced in the Court, he admitted that in respect of some of the cheques the revalidation had been counter signed by the Appellants. The denial of the signature is in any event false. It is pertinent to note that in paragraph 6 of a suit filed by the Respondents before the 3rd Joint Civil Judge, Senior Division, Nagpur, the Appellants contended that they "put a signature below the column in respect of date on the cheques so that the same could be altered subsequently by the Defendants (the Respondents i.e. the Plaintiffs herein) as and when required depending upon the schedule of delivery of the material as also the schedule of payment, subject of course to this being done within the currency of each of the cheques". Thus the fact that the revalidation had been counter signed is admitted. The suit, filed by the Appellants in Nagpur Court is for an injunction restraining the Respondents herein from using the said cheques. It is further pertinent to note that by a

writing dated 7th October, 1999, the Appellants had agreed to keep the dates on the cheques valid from time to time by signing after revising the dates on the cheques suitably. This writing is not denied. It further supports the Respondents' case that the said cheques had in fact been revalidated.

4. In view of revalidation therefore the suit is not barred by limitation.

5. It was contended before the learned single Judge and before us that ultimately in respect of the transactions in both the suits, a settlement was arrived at as evidenced by a letter dated 29th October, 1998 to the effect that only an aggregate amount of Rs.26,00,000/- was payable. The learned Judge by the impugned order proceeded on the basis that a settlement as stated in the letter dated 29th October, 1998 was arrived at and that an amount of Rs.10,00,000/- towards part payment thereof had been made. He therefore ordered a sum of Rs.16,00,000/- to be deposited as a condition for the Appellants to obtain leave to defend both the suits.

6. It is necessary therefore to examine the letter dated 29th October, 1998. The letter is

executed by the Respondents in Appeal No.171 of 2005 i.e. M/s.Alfa Transcore Industries. It records the receipt of cheques aggregating to a sum of Rs.26,00,000/- in full and final settlement of their claims and the dues of all their companies/firms against the Appellants vide cheques listed therein. The receipt is stated to be executed in final accord and satisfaction of all the claims of the Respondents in Appeal No.171 of 2005 and their sister concerns. We proceed therefore on the basis, as did the learned Judge, that such a settlement was arrived at. Thus admittedly a sum of at least Rs.16,00,000/- is due and payable.

7. Mr.Govilkar however submitted that even after the alleged settlement dated 29th October, 1998, the parties had agreed that only an amount of Rs.3,58,354/- "or so" would be payable by the Appellants. Mr.Govilkar however fairly admitted that there was not a single document or circumstance on record which supported this case. We are unable to accept the same.

8. However, the impugned order would require modification. The learned Judge has granted conditional leave to defend both the suits subject to

the Appellants depositing Rs.16,00,000/- jointly in respect of both the above suits. This cannot be done for the simple reason that having decided that only a sum of Rs.16,00,000/- is to be deposited, the Appellants cannot be made to suffer a decree in both the suits in the event of their failure to comply with the order. The order would have to be restricted only to the Summons for Judgment No.230 of 2003 in Summary Suit No.113 of 2003 i.e. in Appeal No.171 of 2005. This is for the reason that the alleged full and final payment was agreed to be made to the Respondents in Appeal No.171 of 2005. The receipt dated 29th October, 1998 is also addressed and executed by and on behalf of the Respondents in Appeal No.171 of 2005. The consequence of a failure to deposit must be suffered only in that suit and not in both the suits.

9. In the circumstances, the Appeals are disposed of by the following order :-

i). The Appellant is granted unconditional leave to defend in respect of the Summons for Judgment No.229 of 2003 in Summary Suit No. 114 of 2003.

ii). The impugned order in Appeal No.171 of 2005

is upheld but shall be restricted to and shall operate only in respect of the Summons for Judgment No.230 of 2003 in Summary Suit No.113 of 2003.

iii). There shall be no order as to costs.